

PROGRESS REPORT NO. 6

MICHIGAN COURT OF APPEALS DELAY REDUCTION PLAN

December 5, 2003

Work Group Members:

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I. OVERVIEW

A. Statement of the Problem

In 2001, the Court disposed of approximately 7,600 cases. Of these, the Court disposed of 3,100 cases by opinion. On average, the Court disposed of these opinion cases within 653 days from the date of filing. The Judges of the Court unanimously determined that this figure was not within acceptable limits and adopted a comprehensive delay reduction plan at a meeting held on March 8, 2002. On August 15, 2002, the Court issued its first progress report covering the first six months of 2002. On November 20, 2002, the Court issued its second progress report covering the first nine months of 2002, with particular emphasis on the months of July, August, and September 2002. On February 24, 2003, the Court issued its third progress report covering all of 2002, with particular emphasis on the months of October, November, and December of 2002. On April 10, 2003, the Court issued its fourth progress report covering the months of January, February, and March of 2003. On August 27, 2003, the Court issued its fifth progress report covering the months of April, May, and June of 2003. This sixth progress report covers the first nine months of 2003, with particular emphasis on July, August, and September of 2003.

B. Goals and Objectives

1. Long-Range Goal

On March 8, 2002, the Judges of the Court adopted an overall long-range goal and two shorter-term objectives designed to meet that goal. The long-range goal was to dispose of 95% of all the Court's cases within 18 months of filing, commencing with those cases filed on and after October 1, 2003.

2. First Objective

To achieve its long-range goal, the Court determined that it would first need to reduce the average time it takes to process an opinion case through the Court from its 2001 level of 653 days by 156 days, to approximately 497 days. To achieve this overall reduction, the Court took a three-pronged approach to reduce delay: *First*, the Court set very aggressive targets for disposing of cases once they reach the Judicial Chambers. *Second*, the Court, through a number of mechanisms, set equally aggressive targets for moving cases much more quickly out of the Warehouse, basically by moving these cases directly into the Judicial Chambers at a considerably accelerated pace. *Third*, the Court proposed a number of changes in the Court Rules, to shorten the time in Intake. The Court designed these actions to take effect over the summer and fall of 2002 through the commencement of FY 2004 on October 1, 2003.

3. Second Objective

Reducing the overall processing time for opinion cases from its 2001 level of 653 days to approximately 497 days will not, however, permit the Court to meet its long-range goal of disposing of 95% of all cases within 18 months of filing. To achieve this long-range goal, the Court must reduce its overall average processing time for opinion cases to approximately 300 days. The Court's second objective is therefore to eliminate the Warehouse.

II. RESULTS THROUGH THE THIRD QUARTER OF 2003 AS COMPARED TO FIRST OBJECTIVE

A. Processing Times

1. *Overall*

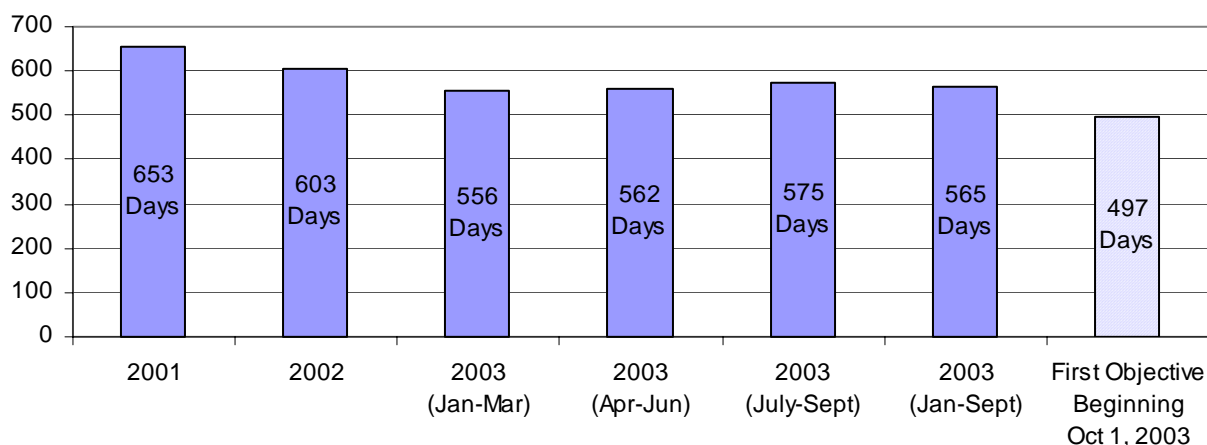
As Chart 1 shows, in 2001 it took 653 days on average to dispose of an opinion case. For those cases disposed of by opinion in 2002, this time was 603 days. For those cases disposed of by opinion in the third quarter of 2003, this time was 575 days.¹ For those cases disposed of by opinion in the first nine months of 2003, this time was 565 days. Graph 1 shows these reductions on a comparative basis and relates them to the Court's first objective.

Chart 1

	2001	2002	2003 Jan-Mar	2003 Apr-Jun	2003 July-Sept	2003 Jan-Sept
Intake	260	240	239	239	234	236
Warehouse	271	261	234	231	239	235
Research	61	62	55	60	67	62
Judicial Chambers	61	40	28	32	35	32
Totals	653	603	556	562	575	565

Graph 1

Overall Time In Processing Compared To First Objective

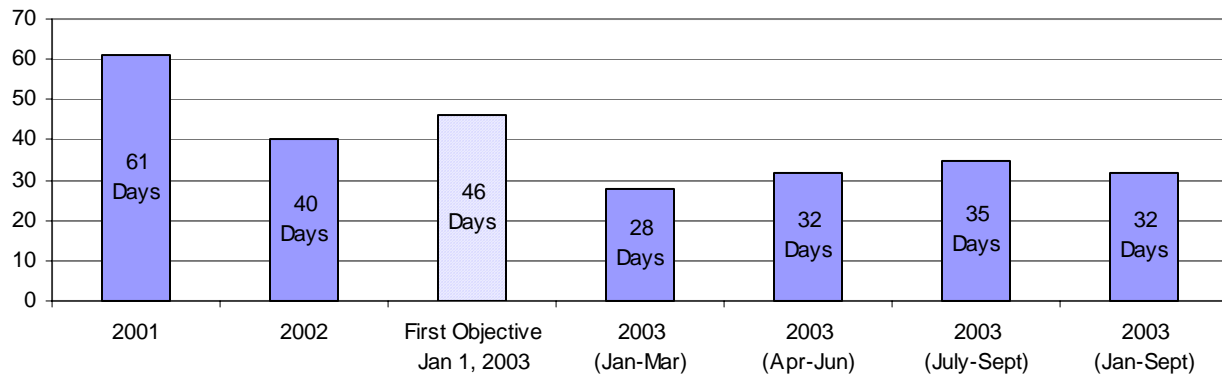


¹ In the third quarter, the Court issued opinions in two separate and unrelated matters in which a number of cases were consolidated. The Court has included these cases in its statistics for the third quarter even though they considerably skew the results for this quarter. If, for example, these cases were excluded, the overall time for the third quarter of 2003 would be 561.

2. Judicial Chambers

As Chart 1 shows, in 2001 for those cases disposed of by opinion the time spent in the Judicial Chambers was 61 days. For those cases disposed of by opinion in 2002, this time was 40 days. For those cases disposed of by opinion in the third quarter of 2003, this time was 35 days. For those cases disposed of by opinion in the first nine months of 2003, this time was 32 days. Graph 2 shows these reductions on a comparative basis and relates them to the Court's first objective. As the graph shows, in the first nine months of 2003 the Court has actually exceeded its objective by 14 days.

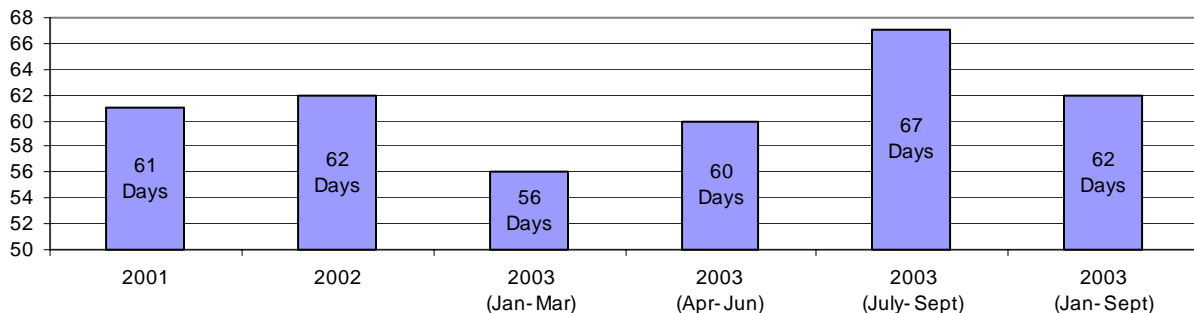
Graph 2
Processing Time In Judicial Chambers Compared To First Objective



3. Research

As Chart 1 shows, in 2001 for those cases disposed of by opinion the time spent in the Research Division was 61 days. For those cases disposed of by opinion in 2002, this time was 62 days. For those cases disposed of by opinion in the third quarter of 2003, this time was 67 days. For those cases disposed of by opinion in the first nine months of 2003, this time was 62 days. Graph 3 shows these increases and reductions on a comparative basis.

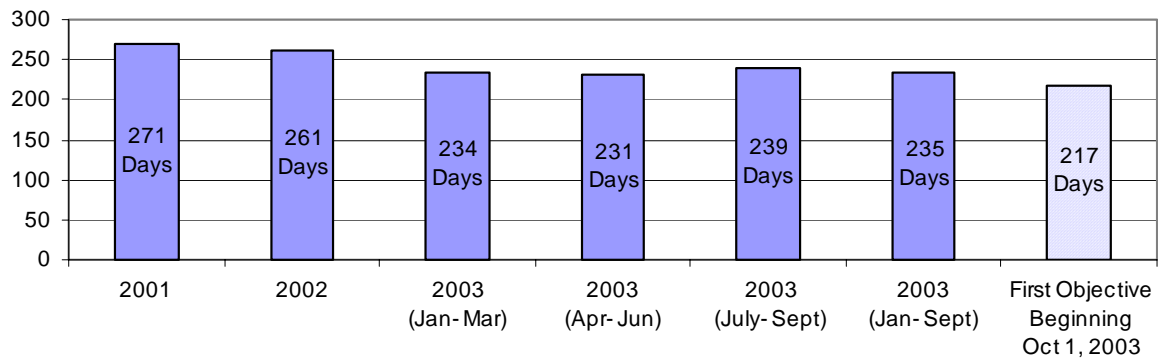
Graph 3
Processing Time In Research Division



4. Warehouse

As Chart 1 shows, in 2001 for those cases disposed of by opinion the time spent in the Warehouse was 271 days. For those cases disposed of by opinion in 2002, this time was 261 days. For those cases disposed of by opinion in the third quarter of 2003, this time was 239 days. For those cases disposed of by opinion in the first nine months of 2003, this time was 235 days. Graph 4 shows these increases and reductions on a comparative basis and relates them to the Court's first objective.

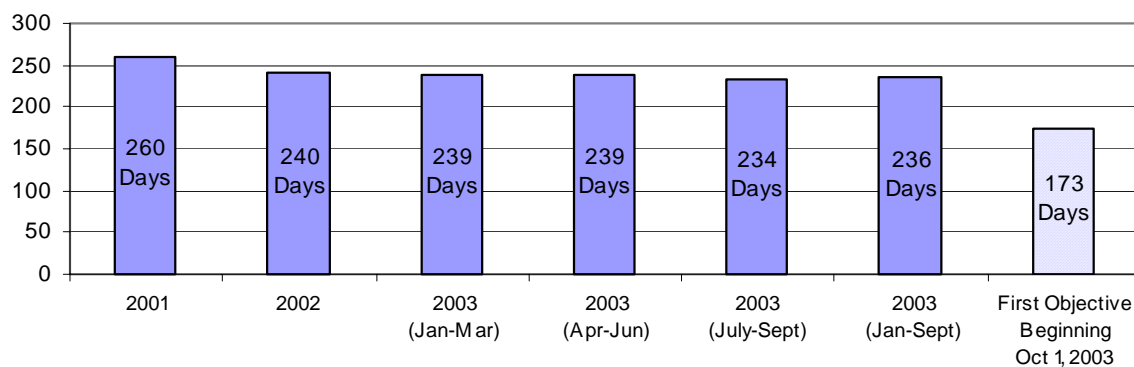
Graph 4
Processing Time In The Warehouse Compared To First Objective



5. Intake

As Chart 1 shows, in 2001 for those cases disposed of by opinion the time spent in Intake was 260 days. For those cases disposed of by opinion in 2002, this time was 240 days. For those cases disposed of by opinion in the first quarter of 2003, this time was 239 days. For those cases disposed of by opinion in the second quarter of 2003, this time was 239 days. For those cases disposed of by opinion in the third quarter of 2003, this time was 234 days. For those cases disposed of by opinion in the first nine months of 2003, this time was 236 days. Graph 5 shows these reductions on a comparative basis and relates them to the Court's first objective.

Graph 5
Processing Time In Intake Compared To First Objective



B. Case Differentiation

Chart 2 shows the overall situation for cases that the Court disposed of by opinion in 2001, arrayed according to major case types.

Chart 2
2001

	Overall Average	Regular/ Complex	Summary	Non- Expedited	Expedited	Custody/TPR
Intake	260	271	229	280	192	187
Warehouse	271	290	214	331	60	56
Research	61	61	62	63	56	52
Judicial Chambers	61	72	27	66	43	30
Total	653	694	532	740	351	325

Chart 3 shows the overall situation for cases that the Court disposed of by opinion in 2002, arrayed according to major case types.

Chart 3
2002

	Overall Average	Regular/ Complex	Summary	Non- Expedited	Expedited	Custody/TPR
Intake	240	254	205	255	178	178
Warehouse	261	290	189	312	58	56
Research	62	59	69	61	66	67
Judicial Chambers	40	49	19	44	26	20
Total	603	652	482	672	328	321

Chart 4 shows the overall situation for cases that the Court disposed of by opinion from January to March of 2003, arrayed according to major case types.

Chart 4
Jan-Mar 2003

	Overall Average	Regular/ Complex	Summary	Non- Expedited	Expedited	Custody/TPR
Intake	239	246	222	254	168	171
Warehouse	234	268	151	281	25	25
Research	55	55	56	53	69	70
Judicial Chambers	28	34	15	31	15	13
Total	556	603	444	619	277	279

Chart 5 shows the overall situation for cases that the Court disposed of by opinion from April to June of 2003, arrayed according to major case types.

Chart 5
Apr-Jun 2003

	Overall Average	Regular/ Complex	Summary	Non- Expedited	Expedited	Custody/TPR
Intake	239	249	216	257	175	179
Warehouse	231	272	133	290	22	18
Research	60	63	53	58	67	65
Judicial Chambers	32	39	17	35	20	14
Total	562	623	419	640	284	276

Chart 6 shows the overall situation for cases that the Court disposed of by opinion from July to September of 2003, arrayed according to major case types.

Chart 6
July-Sept 2003

	Overall Average	Regular/ Complex	Summary	Non- Expedited	Expedited	Custody/TPR
Intake	234	240	217	248	172	175
Warehouse	239	268	164	287	29	29
Research	67	67	65	68	62	62
Judicial Chambers	35	42	17	39	19	15
Total	575	617	463	642	282	281

Chart 7 shows the overall situation for cases that the Court disposed of by opinion in the first nine months of 2003, arrayed according to major case types.

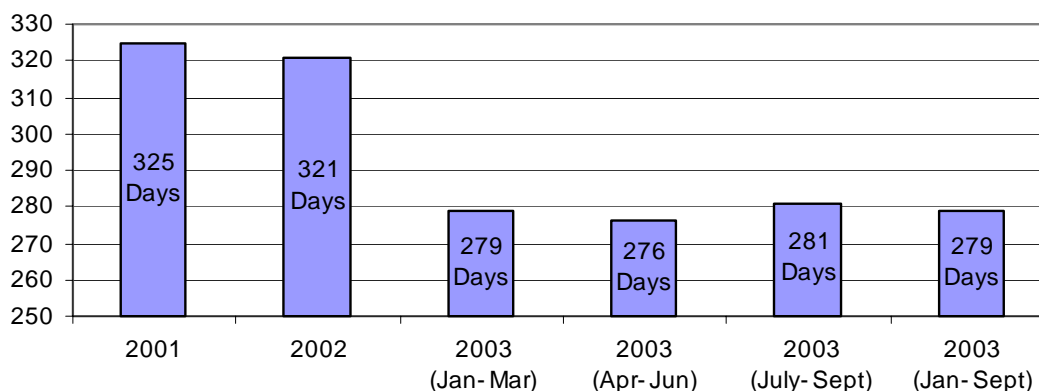
Chart 7
Jan-Sept 2003

	Overall Average	Regular/ Complex	Summary	Non- Expedited	Expedited	Custody/TPR
Intake	236	243	218	252	169	172
Warehouse	235	269	150	285	28	27
Research	62	63	58	61	66	66
Judicial Chambers	32	38	16	35	18	14
Total	565	613	442	633	281	279

C. Dependency Appeals

The Court has also directed special attention to dependency appeals. These appeals arise from trial court orders terminating parental rights (TPR) due to neglect or abuse and appeals arising from trial court orders or opinions involving custody of minor children in domestic relations cases. In 2001, it took 325 days, on average, to dispose of such cases by opinion. Graph 6 shows the situation with respect to dependency appeals for the third quarter of 2003. Note that, as Chart 6 shows, in the third quarter of 2003 the Court disposed of dependency appeals in 281 days on average. Such appeals spent 175 days in Intake while spending 77 days in *all* of the other stages combined, including only 15 days in the Judicial Chambers.

Graph 6
Dependency Appeals



The Dependency Appeals Work Group published its final report in May 2003. See [http://courtappeals.mjud.net/pdf/Dependency Appeals Final Report May 2003.pdf](http://courtappeals.mjud.net/pdf/Dependency%20Appeals%20Final%20Report%20May%202003.pdf). The Court of Appeals has submitted proposed rule amendments to the Supreme Court and they have been published for comment on the Supreme Court's website under ADM File No. 2003-25 at <http://courts.michigan.gov/supremecourt/Resources/Administrative/index.htm#proposed>. (The comment period expired November 1, 2002.) These rule amendments focus on appeals from TPR orders and address delay that occurs *after* entry of such orders and *through* final disposition of an appeal to this Court. The goal is to reduce this time to a total of seven months (210 days). The recommendations of the Work Group will result in an average time of 195 days from the date of the order terminating parental rights through disposition by the Court of Appeals. And only 167 days of that period (highlighted below) will occur at the Court of Appeals:

Days		
Order of TPR	0	Day zero on timeline
Request for counsel	14	Proposed amendment of MCR 3.977(l)(1)(c)
Form appoints counsel, orders transcripts, is claim of appeal	14	Proposed amendment of MCR 3.977(l)(2)
Receive claim of appeal	0	Receipt of claim occurs while transcripts are prepared
File transcripts	42	Due 42 days after ordered per MCR 7.210(B)(3)(b)(iii)
File AT brief	28	Current rule. MCR 7.212(A)(1)(a)(i)
File AE brief	21	Current rule. MCR 7.212(A)(2)(a)(i)
File record	14	Proposed amendment of MCR 7.210(G). ADM No. 2002-34
Send to research	7	Current policy
Complete report	28	Current policy
Submit on call	14	Policy approved in August 2003
Issue opinion	13	Average time at COA from January through June 2003
Total days	195	

One area of gain at the Court will occur in the fourth quarter via the delay reduction funding that was appropriated for FY2004 and that has enabled the Court to engage the services of additional contract attorneys to prepare staff reports on these cases as soon as they are ready. Other areas of gain at the Court will occur during Intake through the proposed rule amendments.

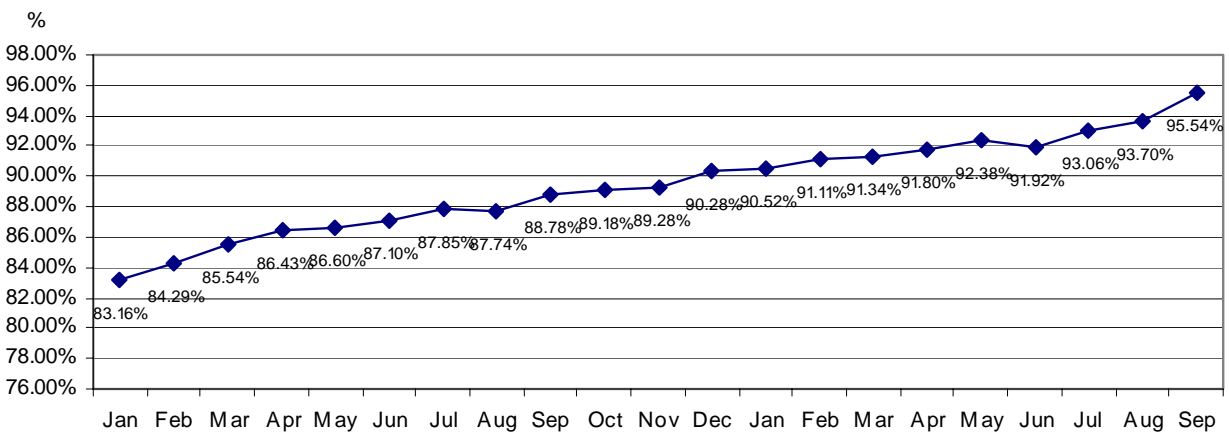
- Amendment of MCR 3.977(I) will establish an automatic claim of appeal that will also constitute the order of appointment of counsel and the order for production of transcripts, for a projected time reduction of 21 days.
- Amendment of MCR 7.210(G) as part of the Court of Appeals Delay Reduction rule amendments in ADM File No. 2002-34 will shorten the time for forwarding the lower court record from 21 days to 14 days.

The net effect of these changes will be a reduction of time on appeal in TPR cases from the present nine-month average of 279 days to the projected average of 167 days.

D. Case Age Percentages

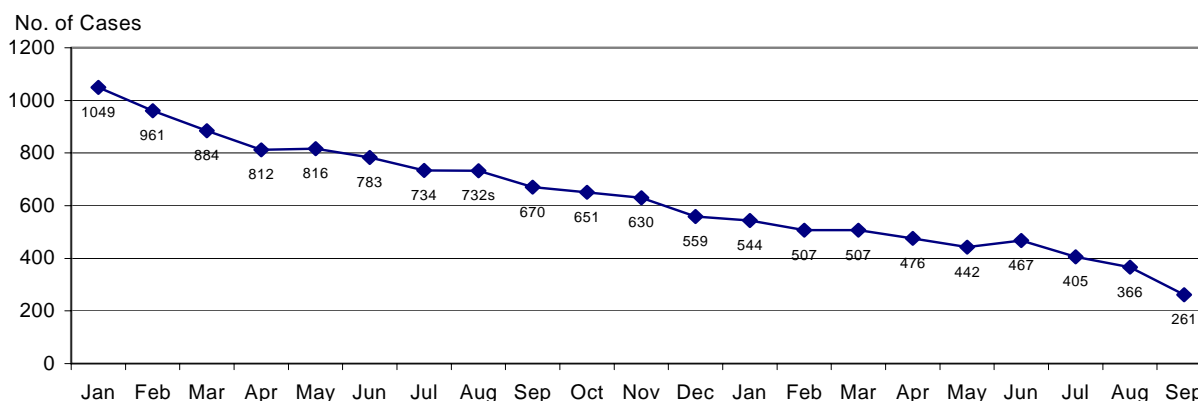
There is another way of looking at the Court's delay reduction progress over the past 12 months and that is by an examination of case age percentages. The Court defines a case age percentage as the percentage of pending cases that are 18 months of age or less from the date of filing. (For example, a case that is filed on January 1, 2002, will be 18 months old on July 1, 2003). At the close of each month, the Court calculates and reports the age of each pending case. Case age percentages give a rough estimate of the *trend* in dispositions. This trend continues to be very good, as Graph 7 illustrates.

Graph 7
Case Age Percentages – 2002/2003
 (Percentage of Cases That Are No More Than 18 Months Old)



Conversely, the *number* of cases that were 18 months of age or more continues to decrease materially, as Graph 8 shows.

Graph 8
Case Age Numbers – 2002/2003
 (Number of Cases That Are More Than 18 Months Old)



These statistics, although very favorable, reflect the age of the Court's pending caseload, expressed as a percentage, not the time it takes to dispose of a case. To illustrate the difference:

Percentage of Cases 18 Months Old Or Less At Disposition

	<u>2001</u>	<u>2002</u>	<u>2003 YTD</u>
Opinions	25.03%	33.31%	44.96%
Orders	x ²	97.36%	98.72%
Totals:	y ²	66.92%	74.54%

Thus, to use a current example, at the end of September of 2003, 95.54% of the cases pending in the Court's inventory were 18 months or less in age; at roughly the same time the Court was deciding 74.54% of its cases within 18 months of filing. Therefore, while the Court is gratified at the increasing percentage of cases in its inventory that are 18 months old or less, the Court still must make considerable progress if it is to meet its long-term goal of deciding 95% of its cases within 18 months of filing.

² These data are not readily available from the Court's database.

III. NEXT STEPS

A. Increasing the Staff in the Research Division

The Court recognized in March of 2002 that, given existing budget constraints, it was not realistic to expect that it could add new attorneys to its Research Division in either FY 2002 or FY 2003. Indeed, the Court actually experienced significant budget *reductions* during both of these fiscal years. Nevertheless, to meet its overall goal of disposing of 95% of all appeals within 18 months of filing, the Court must further reduce the time it takes to process an opinion case to approximately 300 days. In the presentation of its budget request for FY 2004, the Court emphasized that, in order to meet this goal, it must add attorneys to its Research Division and thereby drastically reduce or eliminate the Warehouse.

Fortunately, there was almost universal recognition of this urgent need. As part of an overall package of fee increase bills originated by the Supreme Court, supported by the Executive Branch, enacted by the Legislature, and signed by the Governor, the Court will receive approximately \$525,000 more in revenues in FY 2004 from entry and motion fees that it received in FY 2003. These funds will allow the Court to increase its Research Division staff.

Indeed, the Court has already increased its staff in the Research Division. In the second quarter of 2003, the total staffing level of the Research Division (Commissioners, Senior Research Attorneys and Prehearing Attorneys) remained fairly constant.³ Chart 8 shows the staffing levels in the Research Division for April, May, and June of 2003. The new Prehearing Attorneys who began their employment in August of 2003 have pushed the average staff level to 61.08 attorneys (31.81 Prehearing Attorneys) for the third quarter of 2003. Beginning in the fourth quarter of 2003, the number of Prehearing Attorneys should again increase as a result of the additional revenue generated from the increased filing fees, which became effective on October 1, 2003.

³ There was only a slight decrease in the number of Prehearing Attorneys that occurred as a result of the normal seasonal fluctuation. Because Prehearing is comprised primarily of recent law school graduates, the bulk of the new hires occur in March and August of each year (after the winter graduates take the February bar examination and the spring/summer graduates take the July bar exam, respectively). Between those two dates, the staffing level in Prehearing typically decreases slightly through attrition and stays low until the new hires start in March and August.

Chart 8 Second Quarter Staffing Levels In Research Division

Research Division Staffing Levels - 2003

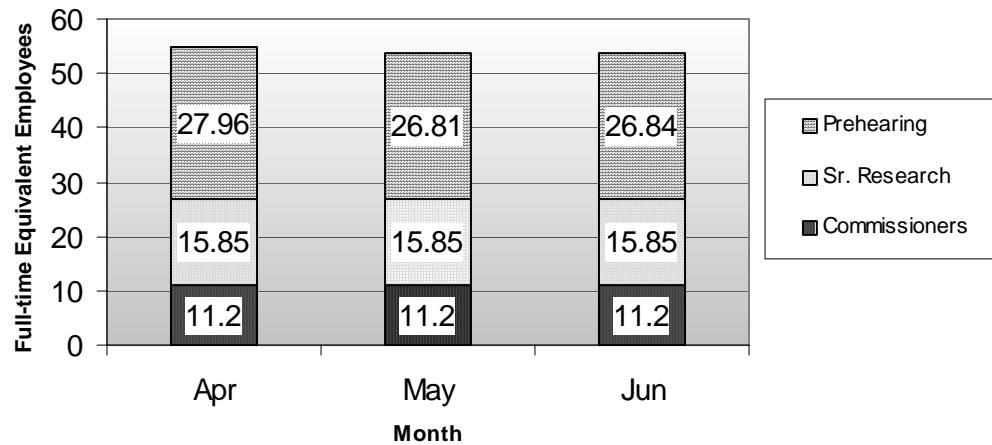
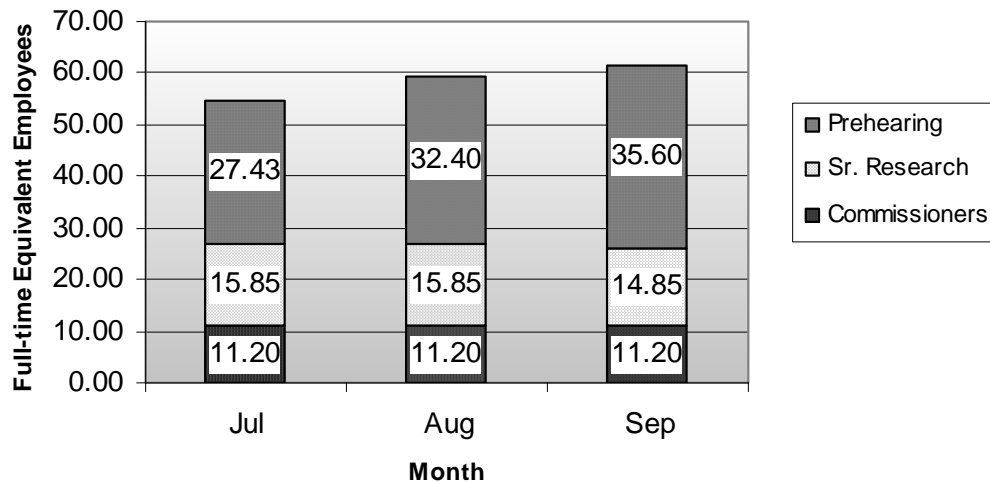


Chart 9 Third Quarter Staffing Levels In Research

Research Division Staffing Levels - 3rd Q 2003



B. Reducing the Time in Intake

As the Court builds up its staff in the Research Division to drastically reduce or eliminate the time a case spends in the Warehouse, it also must address the problem of the delay in Intake. As noted above, in 2001, an opinion case spent 260 days on average in Intake. In 2002, that time was 240 days on average and in the first nine months of 2003 it was 236 days on average. The Court initially proposed to reduce the time a case spends in Intake to 173 days on average for those cases filed on and after September 1, 2003. The Court proposed to meet that objective through adoption of the various changes to the court rules. These proposed changes remain

under consideration by the Michigan Supreme Court while a Case Management Work Group develops a plan for the management of civil cases at the Court that includes “just in time” briefing. The Michigan Supreme Court’s Administrative Order 2003-6 requires that this plan be submitted by February 1, 2004. But the bottom line still remains: based on current data, the Court must cut approximately 63 days from the time an opinion case spends in the Intake phase. Unless the Court can achieve such a reduction, it cannot reach its objective of deciding opinion cases in 300 days on average. Similarly, unless the Court decides its opinion cases in 300 days on average, it cannot reach its overall goal of deciding 95% of all its cases within 18 months of their filing.

IV. CONCLUSIONS

On March 8, 2002, the Judges of the Court of Appeals adopted the ambitious goal of disposing of 95% of all appeals filed with the Court within 18 months of filing. The Court's delay reduction plan, with the exception of changes to the court rules that would reduce the time a case spends in Intake, commenced on an overall basis in July of 2002. During the first nine months of 2003:

- The Court reduced the overall time it takes to dispose of an opinion case from the 2001 level of 653 days to 565 days. The Court's first objective was to reduce the time it takes to dispose of an opinion case to 497 days commencing fully on October 1, 2003. Thus, the Court will need to shorten the time it takes to dispose of an opinion case by another 68 days in order to meet its first objective.
- The Court reduced the time a case spends in the Judicial Chambers from the 2001 level of 61 days to 32 days. The Court therefore achieved — indeed, it exceeded — its objective of reducing the time in the Judicial Chambers to 46 days by January 1, 2003.
- The Court reduced the time a case waits in the Warehouse from the 2001 level of 271 days to 235 days. The Court's objective was to reduce the wait in the Warehouse to 217 days by October 1, 2003. Thus, the Court will need to reduce the time a case waits in the Warehouse by another 18 days to meet its objective. In FY 2004, commencing October 1, 2003, the Court will receive approximately \$525,000 more in revenues from entry and motion fees than it received in FY 2003. These funds will allow the Court to increase its Research Division staff and begin to substantially reduce, if not eliminate, the Warehouse.
- The time a case spends in Intake has been reduced from the 2001 level of 260 days to 236 days. The Court's objective was to reduce the time in Intake to 173 days commencing October 1, 2003. Thus, the Court will need to reduce the time a case spends in Intake by another 63 days to meet its objective.
- The Court has reduced the overall time it takes to process dependency appeals from the 2001 level of 325 days to 279 days. And the Court has proposed additional rule changes that will further reduce the time on appeal of TPR cases to a projected average of 167 days.

Chart 10 summarizes the further progress that will be needed to meet the Court's first objective of reducing the time it takes to dispose of an opinion case from the 2001 level of 653 days to 497 days commencing fully on October 1, 2003.

Chart 10
October 2003 Objective

	2001	2002	2003 First Nine Months	Improvement To Date	First Objective	Improvement Needed To Meet First Objective
Intake	260	240	236	24	173	63
Warehouse	271	261	235	36	217	18
Research	61	62	62	(1)	61	1
Judicial Chambers	61	40	32	29	46	(14)
Total	653	603	565	88	497	68

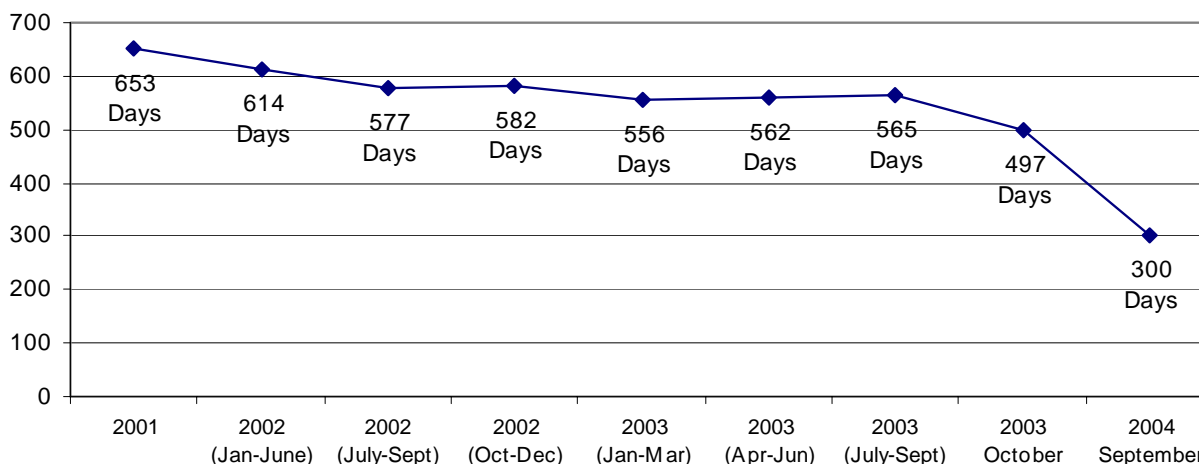
Chart 11 summarizes the additional progress that will be needed to meet the Court's second objective of reducing the time it takes to dispose of an opinion case from the 2001 level of 653 days to approximately 300 days by September of 2004.

Chart 11
September 2004 Objective

	2001	2002	2003 First Nine Months	Improvement To Date	Second Objective	Improvement Needed To Meet Second Objective
Intake	260	240	236	24	173	63
Warehouse	271	261	235	36	0	235
Research	61	62	62	(1)	61	1
Judicial Chambers	61	40	32	29	46	(14)
Total	653	603	565	88	280	285

Graph 9 illustrates the situation from a different perspective, showing the Court's starting point in 2001, the progress the Court made from January through June of 2002, the progress from July through September of 2002, the progress from October to December of 2002, the progress from January to March of 2003, the progress from April to June, 2003, the progress from July to September, the first objective for October of 2003, and the second objective for September of 2004.

Graph 9
Progress Toward Objectives



As mentioned in previous progress reports, the Court has established a solid base upon which it can build over the next year so that it can achieve its long-range goal of deciding 95% of all appeals within 18 months of filing. The Court's core mission is to resolve the cases pending before it with due deliberation *and* due speed. Existing Court policies and procedures are focused on ensuring due deliberation. The Court's delay reduction plan will ensure due speed through the significant reduction of delay on appeal. This is part of the Court's core mission and is, and shall remain, a first priority of the Court.